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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Brad Silvernail;

Plaintiff,

vs.

Hannay Realty Advisors, LP, an Arizona
Limited Partnership; R. Craig Hannay and
Jane Doe Hannay, husband and wife

Case No.: _____

COMPLAINT

JURY DEMAND

Plaintiff Brad Silvernail, for his Complaint against Defendants, alleges as follows:

NATURE OF THE CASE

1. The Fair Labor Standards Act is designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. *See* 29 U.S.C. §§ 206(a), 207(a).

2. Employers must compensate employees for all work that employers permit

1 Hannay Realty Advisors, LP.

2 14. At all relevant times, Plaintiff was an “employee” of Defendants, as defined
3 by 29 U.S.C. § 203(e)(1) and by A.R.S. §§ 23-350 or 23-362(A) (Version 2).

4 15. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendants.

5 16. At all relevant times, each of the Defendants was and continues to be an
6 “employer” as defined in 29 U.S.C. § 203(d) and in A.R.S. §§ 23-350 or 23-362(B)
7 (Version 2).
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9 17. Each of the Defendants is deemed an “employer” for purposes of the FLSA
10 and Arizona Wage Laws including, without limitation, 29 U.S.C. § 216 and in A.R.S. §§
11 23-350 or 23-362(B) (Version 2).

12 18. Defendant R. Craig Hannay is deemed an “employer” for purposes of the
13 FLSA and Arizona wage laws, including, without limitation, 29 U.S.C. §216 and A.R.S.
14 §§ 23-350 or 23-362(B) (Version 2)., and are co-equally liable with Hannay Realty
15 Advisors, LP.

16 19. All Defendants are co-equally liable for all matters.

17 20. On information and belief, Defendant R. Craig Hannay made all decisions on
18 the daily activities of their employees and makes all decisions regarding pay policies and
19 exerted financial and operative control over Hannay Realty Advisors, LP and is therefore
20 individually liable under the FLSA.
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22 21. Defendant R. Craig Hannay had the power to close Hannay Realty Advisors,
23 LP.

24 22. Defendant R. Craig Hannay had the power to hire and fire employees.
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23. On information and belief, Defendant R. Craig Hannay hired managerial employees.

24. On information and belief, Defendant R. Craig Hannay maintained employment records.

25. Defendant R. Craig Hannay profited from the FLSA violations detailed in this complaint.

26. At all times material to this action, each of the Defendants was and continues to be an “enterprise engaged in commerce or in the production of goods for commerce” as defined by 29 U.S.C. § 203(s)(1).

27. Plaintiff engaged in commerce or in the production of goods for commerce and is therefore individually covered under the FLSA pursuant to 29 U.S.C. §§206(a), 207(a)(1), 212(c).

28. On information and belief, at all relevant times, the annual gross revenue of Defendants exceeded, and continues to exceed, \$500,000.00.

FACTUAL BACKGROUND

29. Defendants operate an RV park in Mesa, Arizona.

30. Plaintiff was hired as a maintenance man and front desk clerk for the RV park on August 13, 2013.

31. Plaintiff's job responsibilities included all facets of maintenance for the park. Plaintiff's responsibilities included maintenance on electrical, mechanical, plumbing and climate-control systems.

1 32. Plaintiff would install and assemble equipment, perform periodic inspections
2 and tune-ups.

3 33. Plaintiff also had to perform front desk duties for the RV park which
4 included assisting tenants with issues, processing rent, and other paperwork.

5 34. Plaintiff was required to be in the office Monday through Sunday and was
6 also on call every day, Plaintiff was usually in the office for eight to ten hours each day.

7 35. Plaintiff was also on call after his work hours. If there were any maintenance
8 issues of tenant emergencies, Plaintiff was required to respond to them at all times of the
9 night.

10 36. From the time Plaintiff was hired this was Plaintiff's work schedule.

11 33. Hannay Realty Advisors, LP compensated Plaintiff at an hourly rate of \$10
12 per hour initially but in 2014 he received a raise and was earning \$12 per hour for the
13 remainder of his tenure.

14 34. Plaintiff was a non-exempt employee.

15 35. Even if Plaintiff was an exempt employee, Defendants waived the right to
16 claim the administrative or managerial exemption to the FLSA because they paid Plaintiff
17 an hourly rate.

18 36. Plaintiff had no real supervision or management responsibilities.

19 37. Plaintiff could neither hire nor fire employees.

20 38. R. Craig Hannay made all decisions on whom to hire and fire.

21 39. Plaintiff had no authority to exercise significant independent judgment on
22 issues that affect the whole company when carrying out his job responsibilities.
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1 40. Defendants managed, supervised, and directed all aspects of Plaintiff's job
2 duties and responsibilities.

3 41. Plaintiff's primary duty was not the performance of work directly related to
4 the management or general business operations of Hannay Realty Advisors, LP or its'
5 customers.

6 42. Plaintiff's primary duty was not the performance of work requiring advanced
7 knowledge in a field of science or learning that was acquired by a prolonged course of
8 specialized intellectual instruction.

9 43. Plaintiff would work on average seventy (70) to eighty four (84) hours per
10 week for Hannay Realty Advisors, LP without receiving overtime compensation at time
11 and one half his regular hourly rate.

12 44. Defendants would only compensate Plaintiff only for twenty hours each
13 week he worked.

14 45. Every week Plaintiff worked his regular schedule while in the employ of
15 Defendants, he worked more than forty hours a week and should have been paid time and
16 one half his hourly rate for all hours over forty.

17 46. As a maintenance man, Plaintiff was required to purchase tools, supplies, and
18 equipment for the upkeep of the park.

19 47. Defendants agreed to compensate Plaintiff for his expenses incurred in
20 purchasing supplies.

21 48. Plaintiff's employment with Defendants ended in May of 2015.
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1 58. As the direct and proximate result of Defendants' violations of the FLSA,
2 Plaintiff has suffered damages by failing to receive compensation in accordance with 29
3 U.S.C. § 207.

4 59. Pursuant to 29 U.S.C. § 216, Defendants are liable to Plaintiff for an amount
5 equal to one and one-half times his regular pay rate for each hour of overtime worked per
6 week.

7 60. In addition to the amount of unpaid wages owed to Plaintiff, he is also
8 entitled to recover an additional equal amount as liquidated damages pursuant to 29
9 U.S.C. § 216(b).

10 61. On information and belief, Defendants' conduct in failing to properly
11 compensate Plaintiff, in violation of the FLSA, was willful.

12 62. Defendants have not made a good faith effort to comply with the FLSA.
13 Plaintiff has been required to bring this action to recover his overtime compensation, and
14 his statutory liquidated damages, and as the direct and foreseeable result of Defendants'
15 conduct, Plaintiff has incurred costs and attorneys' fees.

16 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
17 favor against Defendants:
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- 19 a. Awarding Plaintiff overtime compensation in the amount due for all of
20 his time worked in excess of forty (40) hours per week at a pay rate
21 equal to one and one-half times Plaintiff's regular rate of pay while at
22 work for Defendants, in an amount proved at trial;
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- b. Awarding Plaintiff liquidated damages in an amount equal to the overtime award;
- c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the litigation pursuant to 29 U.S.C. § 216(b);
- d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts awarded under subsections (a) and (b) above from the date of the payment due for that pay period until paid in full;
- e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all awards from the date of such award until paid in full; and
- f. For such other and further relief as the Court deems just and proper.

COUNT TWO
FAILURE TO PAY WAGES

62. Plaintiff incorporates and adopts the preceding paragraphs as if fully set forth herein.

63. On information and belief, Defendants failed to pay Plaintiff "wages," as that term is defined by A.R.S. § 23-350, for expenses incurred by Plaintiff which were to be reimbursed by Defendant.

63. Plaintiff is owed wages in the amount of approximately \$2,148.97 for the equipment and supplies he purchased (such as paint, tools, etc.) that Defendants have failed to pay Plaintiff.

1 64. On information and belief, Defendants' failure to pay Plaintiff's wages was
2 willful, unreasonable, and in bad faith.

3 65. Pursuant to A.R.S. § 23-355, Plaintiff is entitled to an award of treble the
4 amount of wages not paid by Defendants.

5 66. Pursuant to, *inter alia*, A.R.S. § 12-341.01, Plaintiff is entitled to an award of
6 attorneys' fees and costs incurred in this action.

7 WHEREFORE, Plaintiff respectfully requests that judgment be entered in
8 Plaintiff's favor and against Defendants:
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10 A. Awarding Plaintiff regular compensation in the amount due to her for all of
11 his time worked for which Defendants provided no compensation while at
12 work for Defendants;

13 B. Awarding Plaintiff treble the amounts calculated pursuant to the preceding
14 paragraph;

15 C. Awarding Plaintiff reasonable attorneys' fees pursuant to A.R.S. § 12-
16 341.01;

17 D. Awarding Plaintiff costs and expenses reasonably incurred in this action;

18 E. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
19 amounts awarded under subsections (a) and (b) above from the date of the
20 payment due for that pay period until paid in full;

21 F. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all
22 awards from the date of such award until paid in full; and
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24 G. For such other and further relief as the Court deems just and proper.
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COUNT THREE
DECLARATORY JUDGMENT

70. Plaintiff incorporates and adopts the preceding paragraphs as if fully set forth herein.

71. Plaintiff and Defendants have an overtime compensation dispute pending.

72. The Court has jurisdiction to hear Plaintiff's request for declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

73. Plaintiff is entitled to declarations, and requests that the Court make declarations as to the following matters and as to other matters deemed appropriate by the Court:

- a. Defendants employed Plaintiff.
- b. Defendants are engaged in an enterprise covered by the overtime provisions of the FLSA.
- c. Plaintiff individually is covered by the overtime provisions of the FLSA.
- d. Plaintiff was not an exempt employee pursuant to the FLSA.
- e. Defendants failed and refused to make payments of overtime compensation to Plaintiff, in violation of the provisions of the FLSA.
- f. Defendants' failures to pay overtime compensation to Plaintiff were willful.
- g. Plaintiff is entitled to damages in the amount of overtime compensation not paid by Defendants at the rate of one and one-half times Plaintiff's regular rate of pay.
- h. Plaintiff is entitled to an equal amount as liquidated damages.

- 1 i. Plaintiff is entitled to recover his costs and a reasonable attorney's fee
2 incurred in prosecuting his claim.

3 74. It is in the public interest to have these declarations of rights recorded as
4 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and
5 settling the legal relations at issue, preventing future harm, and promoting the remedial
6 purposes of the FLSA.

7 75. The declaratory judgment action further terminates and affords relief from
8 uncertainty, insecurity, and controversy giving rise to the proceeding.

9 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
10 favor against Defendants:

- 11 a. Declaring, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§
12 2201–02, that the acts and practices complained of herein are in
13 violation of the overtime and wage provisions of the FLSA;
14 b. Awarding Plaintiff his reasonable attorney's fees and the costs and
15 expenses of the litigation pursuant to the FLSA; and
16 c. For such other and further relief as the Court deems just and proper
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DEMAND FOR JURY TRIAL

Plaintiff and all similarly situated employees hereby request that, upon trial of this action, all issues be submitted to and determined by a jury except those issues expressly reserved by law for determination by the Court.

Dated: August 12, 2015

Respectfully submitted,

**PHILLIPS DAYES NATIONAL EMPLOYMENT LAW
FIRM PC**

By: /s/ Trey Dayes
Trey Dayes
Attorney for Plaintiff